Appendix "E"

## AFFIDAVIT

NOW COMES your Affiant, STUART LEVINE, and after being duly sworn, deposes and says:

(1) Your Affiant was one (1) of three (3) defendants indicted by the Federal Government on June 22, 1973 in Miami, Florida in Cause No.: 72-497-Cr-PF.

(2) From shortly after the indictment in this case up until the day before the trial, Milton E. Grusmark represented your Affiant.

(3) On Friday before the trial date of August 21, 1972, your Affiant asked Mr. Grusmark how he would represent your Affiant and two (2) other co-defendents and would not this pose a conflict. Grusmark said not to worry. At no time did Mr. Grusmark explain to your Affiant that representing the two (2) other co-defendants would present a possible conflict as to your affiant. Your Affiant, on the other hand, did tell Mr. Grusmark that it was at the request of one (1) of the other two (2) co-defendants that your Affiant went to a meeting at a Motel Coffee Shop on May 24, 1972 and that your Affiant had no knowledge as to what purpose this meeting was arranged. Your Affiant insisted that another attorney be brought in to assist Mr. Grusmark. Mr. Grusmark reluctantly agreed, but stated he would retain ultimate trial strategy decision making powers for all three (3) defendants. Your Affiant then retained Mr. Melvyn Kessler and spoke to Mr. Kessler on Sunday, August 20, 1972 for approximately fifteen (15) minutes.

(4) Trial began on August 21, 1972 before the Honorable Peter T. Fay here in United States District Court for the Southern District of Florida. Mr. Melvyn Kessler stated on this date to the Court that he would represent your Affiant at trial.

(5) Your Affiant has lived in Dade County, Florida for over eighteen (18) years, is a family man whose twelve (12) year old son lives with him, and is a licensed Pharmacist with the States of Florida, New York and Washington, D.C. Your Affiant has no prior convictions and in all other ways has an exemplary character and reputation as a family man and a business man.

(6) Your Affiant, after hearing the Government's case against him, requested his attorney, Mr. Kessler, to allow your Affiant to testify in his own behalf. Mr. Kessler agreed and then conferred with Mr. Grusmark in order to obtain final approval. Mr. Grusmark told your Affiant and Mr. Kessler that if your Affiant testified in his own defense he would hurt the case against the other two (2) defendants and thus refused your Affiant's request to testify in his own behalf.

(7) Immediately after your Affiant's conviction in this case, Mr. Grusmark relieved Mr. Kessler as the attorney of record for your Affiant and represented your Affiant on his Appeal to the United States Court of Appeals for the Fifth Circuit along with representing co-defendants Chippas and D'Orsay.

FURTHER your Affiant sayeth not.

/s/ Stuart Levine

STUART LEVINE

STATE OF FLORIDA }
COUNTY OF DADE } ss.:

I HEREBY CERTIFY that on this day personally appeared before me, the undersigned Notary Public, STUART LEVINE, to me well known and known to me to be the person described in and who executed and subscribed to the foregoing Affidavit, and he acknowledged before me that he executed and subscribed to the same for the purposes therein expressed.

WITNESS my signature and official seal at Miami, Dade County, Florida, this 30 day of July, 1973.

/s/ H. Susan Roseman

NOTARY PUBLIC, State of Florida at Large. My Commission Expires July 8, 1977. Bonded thru Maynard Bonding Agency.

# APPENDIX F

## APPENDIX "F"

## AFFIDAVIT

NOW COMES your Affiant, MELVYN KESSLER, Attorney at Law, who is admitted to practice in the State of Florida, the United States District Court for the Southern District of Florida and the United States Court of Appeals for the Fifth Circuit, and being duly sworn deposes as follows:

(1) Criminal Indictment No.: 72-497-Cr-PF was returned by a Federal Grand Jury sitting in Miami, Florida on June 22, 1972 charging the Defendants, Stuart Levine, Louis H. Chippas and Robert D'Orsay with conspiring to possess marihuana with the intent to dispense and distribute same and three (3) other related Counts.

(2) From the inception of Federal Criminal charges against the aforementioned three (3) defendants up to the 21st of August, 1972, the day trial began in this cause, all defendants were represented by Milton E. Grusmark, Attorney at Law, Miami Beach, Florida.

(3) Your Affiant was contacted by Milton E. Grusmark on August 18, 1972 and requested to represent Levine the following Monday at trial before the Honorable Peter T. Fay, United States District Judge. Your Affiant was retained only to appear in behalf of Stuart Levine at the time of trial and not to undertake pretrial motions and investigate the facts of the case since such had been accomplished.

(4) Your Affiant conferred with Stuart Levine on or about August 20, 1972 for a fifteen (15) to thirty (30) minute period of time. Your Affiant was uniformed as to whether any plea bargaining concerning Mr. Levine had been undertaken in his behalf.

(5) On August 21, 1972 trial commenced and your Affiant entered his appearance of record on behalf of Stuart Levine (TR. 44-45)*.

(6) The Defendant Levine has been a resident of Miami, Florida and a licensed Pharmacist with no prior record of convictions. Nowhere in the course of this trial was Levine the subject of competent testimony by any witness or credited with making any comments concerning anything of an illegal nature.

Both before and at the close of the Government's case I advised Levine to testify in his own behalf. Levine advised me that he wished to do so and state (1) his character was exemplary (2) he was a licensed Pharmacist and

(3) explain that his presence at the Miami Airways Motel Coffee Shop on May 23, 1972 at approximately 10:30 a.m. was at the request of one (1) of the other defendants and that he, Levine, had no knowledge of the true purpose of this meeting.

*TR. 44-45 — Refers to Transcript of proceedings before the Honorable Peter T. Fay, on August 21, 1972. Said Transcript is on file with this Court.

(7) Against your Affiant's strongly expressed wishes, Mr. Grusmark declined to have Levine testify on his own behalf, saying if Levine testified he would jeopardize the case against the other two (2) defendants, Chippas and D'Orsay. Levine did not testify.

(8) On August 23, 1972 the jury found the defendant guilty of Counts I and III (TR.565).

(9) On September 14, 1972, following Levine's conviction, Mr. Grusmark substituted as Levine's attorney for purposes of this Appeal, again contrary to your Affiant's strongly expressed wishes, since Mr. Grusmark was representing the other two (2) co-defendants. Based on these facts, your Affiant requested to represent Levine in order to avoid apparent conflict. In addition, your Affiant advised Levine to obtain independent counsel for this Appeal at all cost, and offered to represent Levine free of charge and insisted that Levine perfect his Appeal with any attorney other than that representing Chippas and D'Orsay.

FURTHER your Affiant sayeth not.

/s/ Melvyn Kessler

MELVYN KESSLER
Attorney at Law

STATE OF FLORIDA )
) ss.:
COUNTY OF DADE )

I HEREBY CERTIFY that on this day personally appeared before me, the undersigned Notary Public, MELVYN KESSLER, Attorney at Law, to me well known and known to me to be the person described in and who executed and subscribed to the foregoing Affidavit, and he acknowledged before me that he executed and subscribed to the same for the purposes therein expressed.

WITNESS my signature and official seal, at Miami, Dade County, Florida, this 25 day of June, 1973.

/s/ Signature Illegible
NOTARY PUBLIC, State of Florida

Notary Public State of Florida at Large
My Commission Expires Nov. 26, 1976
Bonded thru General Insurance Underwriters